COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 263 of 2002

Smt. Vishakha and others. …….. **Appellants.**

Versus

District Judge/M.A.C.T.
Dehradun and 2 others. …… **Respondents.**

Coram: Hon'ble P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 14-8-2002, passed in M.A.C.T. Case No.99 of 2000, Smt. Vishaka and others Vs. Sri Madhukar Mahawar and another, by the Motor Accident Claims Tribunal/District Judge, Dehradun ***(hereinafter referred to as the Tribunal),*** Whereby the learned Tribunal has awarded a sum of Rs. 1,70,000/- along with simple interest @ 9% per annum in favour of the claimant-appellant as against O.P. No.2, New India Assurance Co. Ltd. Aggrieved, the claimant has come up in appeal with a prayer to enhance the quantum of award and to set aside the impugned judgment and award mainly on the ground that the quantum of award is quite insufficient and inadequate keeping in view the proved income of the deceased and the evidence led by the claimant-appellant on that count and that the interest awarded by the Tribunal is also inadequate, therefore, the findings of the learned Tribunal are perverse.

Brief facts of the case are that on 31-3-2000 Naresh Kumar Sharma ***(the deceased)***, who was employed as labour in the truck owned by O.P. No.1 was going in the truck No. UP 07 H-0760 after unloading with the good from Uttarkashi to Rishikesh. The tuck in question was being driven by driver Rajendra rashly and

Negligently. When the truck reached near Nalu Pani, Dharansu bend, it fell into a deep ravine and rolled down into the river. All the occupants including the deceased died. Deceased is alleged to be earning Rs. 4,000- Per month and was also getting Rs. 2000/- per month form the work of *Muneem*. The truck in question was owned by O.P. No.1 Madhukar Mahawar and it was duly insured with the O.P. No.2, New India Assurance Co. Ltd. The Opposite Parties contested the claim petition by filing their written statements on different grounds.

The learned Tribunal framed three issues in the case. On Issue No.1 the Tribunal has held that the accident in question resulting into injuries and consequent death of deceased Naresh Kumar had occurred due to rash and negligent driving by the driver of the ill-fated truck. On Issue no.2, it has been held that the tuck driver was holding a valid driving licence on the date of accident. On Issue No.3, the learned tribunal came to the conclusion that the claimants have not adduced any documentary evidence to prove the income of the deceased, therefore, notional income of Rs. 15,000/- has been taken for the purpose of determination of compensation. Ultimately, it has been found that annual loss of dependency comes to Rs. 10,000/- after deducting 1/3rd of the said notional income. The deceased was found in the age group of 30-35 years, therefore, after applying multiplier of 17, total compensation has been determined at Rs. 1,70,000/-. The Tribunal has also awarded interest @ 9% per annum. Since the truck in question was insured with the New India Assurance Co. Ltd., therefore, the Insurance Company has been ordered to pay the compensation.

We have heard learned counsel for the appellants, Mr. Ramji Srivastava, as well as learned counsel for the respondent no.3-Insurance Company, Mr. T.A. Khan, and have carefully gone through the entire material on record.

The learned counsel for the appellants has argued that the income of the deceased, i.e. Rs. 4,000/- per month, in addition to Rs. 2,000/- per month, was not taken into account by the learned Tribunal, through the income of the deceased was proved in evidence by the claimants, therefore, it is a case fit for enhancement of compensation amount. We have gone through the entire evidence produced in the case. It is true that the widow of the deceased, Smt. Vishakha Devi, P.W.1, has stated in her statement on oath that the deceased was getting Rs. 4,000/- per month as salary and he used to earn Rs. 2,000/- from part-time work. It is also true that the claimant-appellants have filed a certificate of salary purporting to have been issued by the employer of the deceased, he O.P. No.1, but to prove the salary-certificate, the O.P. NO.1 was the best witness, who has not been examined in the case. There is not evidence worth the name to show income of Rs. 2,000/- from part-time job of the deceased. The Tribunal has also discussed all the relevant evidence available on record and has committed no error in appreciating the evidence. We are unable to hold otherwise on the point of income of the deceased. Accordingly, in our opinion, the learned Tribunal was justified in taking the notional income of the deceased as provided by Second Schedule of Section 163-A of the Act, i.e. Rs. 15,000/- per annum. The age of the deceased has been mentioned 32 years in the claim petition, therefore, the multiplier of ***17*** has been correctly applied by the learned Tribunal in the present case. In any view of the matter, we find no illegality or infirmity in the findings recorded by the learned Tribunal in determining the just amount of compensation in the case under appeal. Ultimately, the appeal fails on merits.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

(B. S. Verma, J.) **(P.C. Verma, J.)**

28-08-2004
RCP